



Fedex 2-2.30

INSTRUCTION CPL 2-2.29
DATE: May 13, 1982
SUBJECT: Authorization of Review of Medical Opinions
TO: TOSHA Personnel
FROM: Director *RBE*
THRU: Chief, Standards & Procedures *RBE*

- A. PURPOSE: To authorize appropriately qualified TOSHA personnel to conduct reviews of medical opinions mandated by specific occupational safety and health standards where there is a need to gain access for enforcement purposes.
- B. DOCUMENTS REFERENCED:
1. This instruction implements paragraph F.6. of TOSHA Instruction CPL 2.22; dated March 1, 1982; Subject: Access to Employee Medical Records.
 2. This instruction adopts the provisions of OSHA Instruction CPL 2-2.30; dated November 14, 1980; Subject: 29 CFR 1913.10(b)(6), Authorization of Review of Medical Opinions.
- C. BACKGROUND:
1. TOSHA compliance personnel have unlimited access to conduct an examination of medical opinions that are mandated by specific occupational safety and health standards, solely in order to verify employer compliance with recordkeeping requirements (i.e., to determine that the medical opinions exist). See TOSHA Instruction CPL 2.22, paragraph F.4.
 2. There may, however, be compliance needs for reviewing the content of - and, if appropriate, copying - the medical opinions mandated by standards. For example, access to medical opinions could serve to determine whether an employer failed to take necessary corrective action recommended by a physician. Other potential needs to gain access to such medical opinions are illustrated in paragraph F. of this instruction.
 3. Paragraph F.6. of TOSHA Instruction CPL 2.22 excludes from the application of the provisions of that instruction situations "where a written directive by the Director, . . . , authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard . . . , or of specific biological monitoring test results."
 4. Thus, this instruction authorizes appropriately qualified field personnel to conduct reviews of medical opinions mandated by the specific standards set forth in paragraph D. of this instruction where there is a need to gain access for enforcement purposes.
- D. SPECIFIC MEDICAL INFORMATION: This instruction authorizes the examination of the content of and, if appropriate, copying of physician-written medical opinions mandated by the following standards:

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1. 29 CFR 1910.134(b)(10) Respiratory Protection - Requirements for a minimal acceptable program.
2. 29 CFR 1910.1017(k)(4) Vinyl Chloride - Medical surveillance.
3. 29 CFR 1910.1018(n)(6)(i) Inorganic Arsenic - Medical surveillance - Physician's written opinion.
4. 29 CFR 1910.1025 Lead:
 - a. 1910.1025(j)(3)(v) Medical surveillance - Medical examinations and consultations - Written medical opinions.
 - b. 1910.1025(k)(1)(ii) Medical removal protection - Temporary medical removal and return of an employee - Temporary removal due to a final medical determination.
5. 29 CFR 1910.1029(j)(5) Coke Oven Emissions - Medical surveillance - Physician's written opinion.
6. 29 CFR 1910.1043(h)(5) Cotton Dust - Medical surveillance - Physician's written opinion.
7. 29 CFR 1910.1044(m)(5) 1,2-Dibromo-3-Chloropropane - Medical surveillance - Physician's written opinion.
8. 29 CFR 1910.1045(n)(6) Acrylonitrile - Medical surveillance - Physician's written opinion.

NOTE: The "medical opinion" is that information the employer is required to obtain pursuant to the specific provisions cited above for these standards.

E. QUALIFIED COMPLIANCE PERSONNEL: Review of the content of any medical information obtained or maintained pursuant to the standards listed in paragraph D. of this instruction, which is in personally identifiable form, shall be limited to TOSHA field-qualified industrial hygienists or professionals with training in medical disciplines (normally industrial hygienists in grades IH-2 or higher).

F. STATUTORY PURPOSE AND NEED TO GAIN ACCESS:

The purpose of obtaining access to this medical information is to assure safe and healthful working conditions for working men and women by providing an effective enforcement program for TOSHA standards and the Tennessee Occupational Safety and Health Act. See T.C.A. § 50-502.

2. The need to gain such access in specific circumstances could be indicated by the following considerations:
 - a. Access to medical opinions could serve to determine whether an employer failed to take necessary corrective action recommended by a physician, such as medical removal or respiratory protection; or to inform employees of the recommended action required by the standards

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- b. Review of the content of employee medical opinions could be relevant to the type of enforcement action TOSHA may initiate against an employer, or can serve as proof of the appropriateness of an enforcement action.
- c. Medical opinions could be highly relevant to imminent danger situations. Medical opinions could demonstrate that a particular employee in light of that employee's current health status, faces an imminent danger of morbidity or death from present working conditions.
- d. Access to medical opinions may be necessary to identify problem areas for physicians or other qualified TOSHA personnel to review.

G. LIMITATIONS:

Before obtaining access to the medical information described in paragraph D. of this instruction, it must be determined that there is a need to gain access for TOSHA enforcement purposes. Access to this medical information for purposes other than for the limited enforcement needs illustrated in paragraph E. of this instruction will require a written access order pursuant to paragraph H. of TOSHA Instruction CPL 2.22 unless:

- a. Specific written consent of an employee is obtained pursuant to 29 CFR 1910.20(e)(2)(ii), and TOSHA or a TOSHA employee is listed on the authorization as the designated representative to receive the medical information.
- b. A TOSHA contract physician consults with an employer's physician pursuant to paragraph H.4.b. of TOSHA Instruction CPL 2.22.

H. SECURITY PROCEDURES: Whenever personally identifiable employee medical information is obtained pursuant to this instruction and taken off-site, the Area Supervisor shall:

1. Promptly consult with the Chief, Health Standards Enforcement (TOSHA Medical Records Officer) to name a Principal TOSHA Investigator to assure protection of the information.

Assure that the personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs L. through Q. of TOSHA Instruction CPL 2.22.

I. ACTION:

1. The Chief, Health Standards Enforcement, and Area Supervisors shall assure that:
 - a. This authorization to review specific medical information is administered and implemented according to the provisions of paragraphs D., E., F., G., and H. of this instruction.
 - b. The personally identifiable employer medical information to be examined or copied is limited to only that information needed for enforcement purposes, and is handled with appropriate discretion and care.

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2. Personnel shall annotate the referenced document (see paragraph B.1. of this instruction) and the standards requiring written medical opinions (see paragraphs D.1. through 8. of this instruction) in accordance with TOSHA Instruction ADM 5.2.

J. EFFECTIVE DATE: This instruction is effective upon receipt and shall remain in effect until cancelled or superseded.